

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

CHAD M. BUBRICK,

Plaintiff,

v.

DAVID FRAZIER, et al.,

Defendants.

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CIVIL ACTION NO. 5:09-CV-13 (MTT)

ORDER

This matter is before the Court on the Plaintiff's Fed. R. Civ. P. 60(b) Motion for Relief from Judgment. (Doc. 138). Rule 60(b)(2) motions must be filed within a year from judgment and the movant must show that "(1) the evidence is newly discovered since the trial; (2) he exercised due diligence to discover the new evidence; (3) the evidence is not merely cumulative or impeaching; (4) the evidence is material; and (5) the evidence is such that a new trial would probably produce a new result." *Willard v. Fairfield S. Co., Inc.*, 472 F.3d 817, 824 (11th Cir. 2004).

Here, on May 3, 2011, two months after the entry of judgment, the Plaintiff had a biopsy performed that confirmed he has celiac disease. This evidence is neither material nor would produce a new result because this Court expressly has stated that dermatitis herpetiformis, for which the Plaintiff was treated, is a skin manifestation of celiac disease. (Doc. 128, at 2 n.2).

The Plaintiff also argues that because his biopsy report revealed continual villous atrophy, the Defendants must have been deliberately indifferent to his serious medical needs by withholding his Dapsone treatment for over 2 ½ months. It seems the Plaintiff

is referring to the period from August 16, 2007, to October 2, 2007, – a 1 ½ month period – when the Plaintiff’s medication was changed from Dapsone to Erythromycin. Even if this brief change in medication could be attributed to the Plaintiff’s villous atrophy, it does not change the Court’s conclusion that the Defendants did not act with deliberate indifference.

Further, the Plaintiff has failed to demonstrate any fraud by the opposing parties pursuant to Fed. R. Civ. P. 60(b)(3). The Court does not find any other reason that justifies relief pursuant to Fed. R. Civ. P. 60(b)(6). Accordingly, the Motion is **DENIED**.¹

SO ORDERED, this 2nd day of May, 2012.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT

¹ Pursuant to the Plaintiff’s April 23, 2012, letter, the Court acknowledges receipt of his Reply.